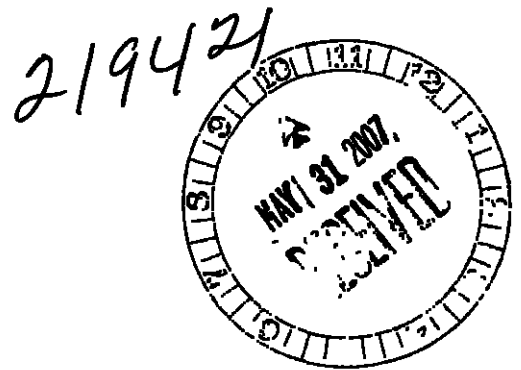


CHARLES H MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE WASHINGTON 98177
206 546-1936
FAX 206 546-3739



30 May 2007
Express

Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

ENTERED
Office of Proceedings

MAY 31 2007

Part of
Public Record

Re: PYCO Industries v. South Plains Switching, Ltd.,
Finance Docket 34870

Opposition to SAW's Letter of May 23 requesting
further delay

Dear Mr. Williams:

"
This refers to the letter filed by South Plains Switching, Ltd. (SAW) on May 23, 2007, in which SAW continues to ask that this proceeding be held in abeyance. Complainant PYCO Industries does not agree.

SAW's principal argument (Letter, p. 2) is that PYCO does not require relief "inasmuch as alternative rail service is being provided" at the current time and SAW believes that "an entity other than SAW" will provide service at the conclusion of pending feeder line development procedures.

Unfortunately, SAW is unrelentingly pursuing a damage action in Texas state court against PYCO arising from PYCO's refusal to pay unlawful and discriminatory surcharges and constructive placement fees. In addition, SAW through its alter ego Choo Choo Properties, Inc., is maintaining a Texas state court trespass action against PYCO preventing PYCO's use of a critical crossing between PYCO's cottonseed stockpile and its Plant No. 1.

In the case of SAW's state court damage action, PYCO has asserted defenses over which this Board has both primary and exclusive jurisdiction, and in addition has put the various surcharges and fees at issue in F.D. 34870. Since SAW will not voluntarily hold its state court action in abeyance, PYCO requires relief in F.D. 34870 regardless of the alternative service PYCO is now receiving, and regardless whether another carrier ultimately serves shippers in Lubbock as a result of the feeder line proceeding.

In the case of the trespass action brought by SAW a/k/a Choo Choo, that proceeding flies in the face of this Board's orders designed to prevent SAW (and Choo Choo) from obstructing the crossing. Since SAW d/b/a Choo Choo again will not relent, and since PYCO is sustaining damages, PYCO obviously again requires relief, and this complaint proceeding is an appropriate vehicle both to afford PYCO relief, and through which this Board may enforce its orders.

Ironically, in the pending civil litigation in Texas, SAW urges that the state court proceed against PYCO on the ground that it is unclear when or if this Board will address the relevant issues. Yet now in front of this Board, SAW seeks to prevent this Board from addressing those issues. SAW is merely seeking to deny PYCO relief here in order to pressure PYCO through state court proceedings. SAW's brand of bootstrapping should not be rewarded.

SAW also insinuates that the damages PYCO seeks in its amended complaint are somehow barred. PYCO is prepared to show to the contrary.

SAW should answer PYCO's amended complaint. If SAW thinks there are grounds to dismiss elements of the amended complaint, then SAW should file a motion and state its arguments. As of this time, SAW neither has answered nor has moved to dismiss.

According to 49 C.F.R. § 1111.4, SAW's answer is due 20 days from the date of PYCO's Complaint amendment. PYCO's complaint amendment was filed on May 17. SAW's answer is thus due on June 6, 2007.

Since it appears that SAW is seeking to delay rather to resolve this proceeding, PYCO must prudently request that SAW respond to PYCO's first set of discovery requests by the due date of SAW's answer (June 6) as well.¹

In order to facilitate discovery, PYCO has previously moved

¹ PYCO served discovery on SAW on May 9, 2007, for response by May 24, in accordance with this Board's May 4 scheduling order. Subsequent to PYCO's filing of complaint amendments, PYCO's counsel advised SAW's counsel that PYCO would be amenable to a reasonable delay in response since the complaint amendments would trigger a 20-day answer period and a likely amendment to the scheduling order. The June 6 due date for SAW's response to PYCO's already tendered discovery affords SAW an additional thirteen days to respond, and is compatible with an efficient proceeding.

•
• for the extension of the protective order applicable in F.D. 34890 to cover this proceeding as well, or for a clarification that the protective order already applies.

Respectfully submitted,



Charles H. Montange
for PYCO Industries, Inc.

cc. Thomas E. McFarland
208 South LaSalle St., Suite 1890
Chicago, IL 60604-1112 (for SAW)